

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MELANIE KITT WALKER,

Defendant-Appellant.

UNPUBLISHED

September 28, 2010

No. 292043

Wayne Circuit Court

LC No. 08-018982-FC

Before: MURPHY, C.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of armed robbery, MCL 750.529, and two counts of assaulting, resisting, or obstructing a police officer, MCL 750.81d(1). The trial court sentenced defendant to 8 to 20 years' imprisonment for the armed robbery conviction and to time served for the assaulting, resisting, or obstructing a police officer convictions. Defendant appeals as of right. Because defendant's conviction for armed robbery is supported by sufficient evidence and is not against the great weight of the evidence, we affirm.

Defendant argues that her conviction for armed robbery is not supported by sufficient evidence because there was no evidence that she committed a larceny. We disagree. In a challenge to the sufficiency of the evidence, we review the record de novo. *People v Roper*, 286 Mich App 77, 83; 777 NW2d 483 (2009). We must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found that the prosecution proved the essential elements of the crime beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

"The essential elements of an armed robbery are (1) an assault, and (2) a felonious taking of property from the victim's person or presence, while (3) the defendant is armed with a weapon described in the statute." *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993). Defendant argues that the prosecution failed to establish "a felonious taking of property" beyond a reasonable doubt because the police never recovered the alleged proceeds of the robbery, five \$1 bills. Although the record is unclear regarding the precise location of the money when defendant was arrested or how defendant managed to dispose of it, these are not elements of armed robbery, and the prosecution was not required to prove these issues. All that was required was sufficient evidence for the trial court, as the trier of fact, to find beyond a reasonable doubt that defendant in fact took the money.

Here, the trial court's determination whether defendant took money from the cab driver required a weighing of conflicting testimony. The cab driver testified that defendant stuck a pointy object in the back of his neck after he told her that he was going to drive her to the police station. When she threatened to cut him if he did not give her money, the cab driver gave her five \$1 bills. She then got out of the cab and jumped into a silver vehicle two cars ahead. Defendant denied taking money from the cab driver or holding an object against his neck. The trial court found the testimony of the cab driver to be credible, stating that the cab driver had no reason to lie and that his testimony regarding other aspects was verified by other witnesses. The trial court stated that it did not believe defendant's testimony. When there is conflicting testimony, the question of witness credibility ordinarily should be left for the trier of fact. *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998). We will not interfere with the trier of fact's role in determining the credibility of the witnesses or the weight of the evidence. *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005). Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found beyond a reasonable doubt that defendant took five \$1 bills from the cab driver. Defendant's conviction for armed robbery is supported by sufficient evidence.

Defendant also argues that her armed robbery conviction is against the great weight of the evidence. We disagree. A verdict is against the great weight of the evidence when "the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *People v Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003). In general, witness credibility determinations are for the trier of fact. *Lemmon*, 456 Mich at 642. "Conflicting testimony, even when impeached to some extent, is an insufficient ground for granting a new trial." *Id.* at 647.

Here, as indicated above, the witnesses presented conflicting testimony, and the trial court found the cab driver's account to be more credible than defendant's. The fact that the police were unable to locate the proceeds of the robbery did not deprive the cab driver's testimony of all probative value such that it could not be believed or render the testimony inherently implausible. *Id.* at 643-644. In short, the evidence does not preponderate so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *Musser*, 259 Mich App at 218-219. Therefore, the verdict is not against the great weight of the evidence.

Affirmed.

/s/ William B. Murphy
/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens